No. 97-942

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

IN RE: AMTRAK "SUNSET LIMITED" TRAIN CRASH IN BAYOU CANOT, ALABAMA, ON SEPTEMBER 22, 1993,

JAMES ALTONSINO; MARIE V. ALTOSINO; JOHN L. ANDERSON; ALICE ANELLO; JOSEPH ANELLO, ET AL.,

Petitioners,

v.

WARRIOR & GULF NAVIGATION COMPANY; WILLIE C. ODOM; ANDREW STABLER; CSX TRANSPORTATION, INC., AND NATIONAL RAILROAD PASSENGER CORP., D/B/A AMTRAK,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

I. The Decision below reveals a true conflict in the application of the law of punitive damages that is both inequitable and illogical

Two passengers were seated next to each other on a train. The train derailed and crashed. One passenger was killed and the other was severely injured. An action in tort lies with respect to both the death and the personal injury claims, and because of the scope of the Admiralty Extension Act, admiralty jurisdiction is present. Relying on *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 116 S.Ct. 619, 629, 133 L. Ed. 2d 578 (1996) the Court below held that the beneficiaries in the death action may seek to recover punitive damages. *In Re Amtrak "Sunset Ltd." Train Crash*, 121 F.3d 1421, 1427-28 (11th Cir. 1997). Relying on *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S.Ct. 317, 112 L. Ed. 2d 275 (1990) and its progeny, the Court below held that the survivor who sustained personal injuries may not seek to recover punitive damages. *In Re Amtrak "Sunset Ltd." Train Crash*, 121 F.3d 1421, 1429 (11th Cir. 1997). This is not a "manufactured" conflict in the law. The only factual distinction between the two passengers is that one died from his injuries and the other did not. The tension between *Calhoun, supra,* and *Miles, supra,* led the Court below to reach a result that is inequitable, anomalous and illogical. There is no rational reason why a train passenger who actually sustains serious, debilitating injuries should be denied the right to recover

punitive damages while the family of the passenger sitting next to him is permitted to recover punitive damages when both passengers sustained their injuries in the same accident. Punitive damages in this case are based on the defendants' singular tortious conduct which adversely affected both passengers in the same manner except that fortuitously one lived and one died.

II. The exclusion of punitive damages in maritime personal injury cases creates an unnecessary conflict with the general rules applicable in land-based tort law.

In the absence of statute to the contrary, general maritime law should not conflict with the mainstream of land-based tort law whereby virtually every state recognizes the right to recover punitive damages in tort cases involving personal injuries under appropriate circumstances. It is not suggested that there is uniformity in the substance of the various state rules, but simply, as a general proposition, punitive damages are recognized as an element of damages under the tort law of most states, unless precluded by statute. RICHARD L. BLATT, ROBERT W. HAMMESFAHR AND LORI S. NUGENT, PUNITIVE DAMAGES: A STATE-BY-STATE GUIDE TO LAW AND PRACTICE (1996 pocket part) and 2 LINDA L. SCHLUETER & KENNETH R. REDDEN, PUINITIVE DAMAGES (3d ed. 1995).

III. The right to recover punitive damages is part of the general maritime law of torts and its application in an appropriate maritime personal injury case is not the "creation of a new right".

In the absence of statute to the contrary, the right to recover punitive damages has been recognized as appropriate item of damages under the general maritime tort law. This Court in *The Amiable Nancy,* 16 U.S. 546, 4 L. Ed. 456 (1918) in 1818 articulated the general rule in Admiralty that punitive damages could be awarded in an appropriate maritime tort case. It has never held to the contrary. There is nothing in this Court's opinion in that case or subsequent cases that restricts recovery of punitive damages to torts committed by "pirates" as distinguished from those committed by other tortfeasors. There is nothing in this Court's opinion in that case or subsequent cases which restricts recovery of punitive damages under the general maritime law to death cases. In fact the Court below listed various situations in which punitive damages had been awarded in maritime cases by lower federal courts, but it refused to apply that punitive damage rule to other personal injury cases. *In Re Amtrak "Sunset Ltd." Train Crash,* 121 F.3d 1421, 1428-29 (11th Cir. 1997).

IV. The distinction suggested by respondents between death cases and personal injury cases does not bear scrutiny.

Recovery for personal injury under the general maritime tort law was permitted when this Court announced in *The Amiable Nancy, supra,* that punitive damages could

be recovered in an appropriate tort situation. At that time recovery for wrongful death was not permitted under the general maritime law. To now suggest that punitive damages are recoverable in death cases but not personal injury cases seems at odds with the development of the general maritime tort law. Furthermore, there is nothing in the creation and development of the law of punitive damages that derives from death actions or gives it special significance or applicability where tortious conduct results in death rather than injury. Punitive damages derive from the conduct of the tortfeasor which causes injury to another; they are not based on the sometimes fortuitous circumstance in which some injuries result in death. Punitive damages are not a remedy uniquely associated with death. Thus the death – injury distinction asserted by respondents is simply unwarranted. The award of punitive damages can be sustained under the general maritime law and is not dependent on the creation of a new right. There is no statute that precludes that plaintiffs in both the personal injury and the death actions from recovering punitive damages.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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